Unpacking the Luggage 2013: Christopher McCrudden

Christopher McCrudden 2013-10-07T22:01:13

Hi Chris, how was your vacation? Have you had time to do any traveling as of yet?

Not yet. As I think you know, we are going to be in New York for nine months starting in September. And we are taking the boat! On the second of September, next Monday, and getting into New York on the evening of the tenth. So that is effectively our summer holiday, really.

Wow, what a great experience. Have you done this before?

Well, the very first time I went to the States was in 1974, and the scholarship I was on was a wonderful one in that transported us there on the SS France, so my first sight of the U.S. was sailing past the Statute of Liberty, on a summer morning, and there was a mist surrounding the Statue of Liberty – absolutely magical! I have always wanted to see that again and to show my wife Caroline what it was like. Now we thought would be a good opportunity.

And you are not afraid of repeating such a key moment of your life? If there is so much romance and significance in an experience …

Yes, you are always torn as to whether you want to share it or keep it special and separate. I think I want to share this one. It will be different, of course. Different ship, different me, certainly a different environment that I am sailing into. So, you know, it will be different. But I think some of the magic I hope for will translate as well. Anyway, it is also an opportunity to travel without interruption for more than seven days – what could be better?

What books did you read this summer? What books are you planning to take on the boat?

Well, the book I have actually spent most time on is because of you. It is Hans Joas' new book, which as you know has just been translated into English. Actually, that has been my summer reading. And it is entirely because of Joas giving that lecture at the Wissenschaftskolleg back in June.

Hans Joas would not otherwise have been on your list?

No. To my shame. He wasn't. And I very much enjoyed it. Not least because I was reading it at the same time as re-reading Samuel Moyn's book *The Last Utopia*, which you probably know as well, and doing some work on that while reading Joas in parallel made a very deep impression on me because of the very different style, methodology, starting point – so that has been very enriching. And he has been kind enough to look at some of the comments, so we will work on this together as

soon as he is back from vacation, and I am looking forward to developing a deeper relationship, I hope, with that. I was immensely impressed by his lecture.

And the two of you also share a common approach in that you see human dignity as morally linked to a certain theological background, which can only facilitate any Joas/ McCrudden exchange.

Yeah. I think particularly coming from the more historical, sociological approach. This is the one area that seems to me not as fully developed – not surprisingly, for that is not what Joas attempted to do – but one area that is not as fully developed is where legal development comes into this picture. So I insist that it become not just a question of moral sensitivity but that it engage hard questions of human rights as such. And I think this quite an important area that he does not even attempt to address. That leaves a gap in terms of the historical continuity of his argument. He is clearly familiar with it. But I can see that it is not as well developed, perhaps, as the sociology of law and other areas. Leaving that aside, I thought that the sensitivity with which he dealt with the issue was just extraordinary. Particularly in attempting to build in a more naturalistic understanding, but without the kind of teleology that Sam Moyn is – I think rightly – concerned with trying to head off. Addressing the problem of genealogy whilst nevertheless being sensitive to more a naturalistic understanding is, I think, a very interesting operation. I also liked the way he sort of incorporated some of the Lynn-Hunt-type of approach to empathy, by sort of transcending it. He dealt with that quite neatly. He argued that empathy was important but that it needed to be generated by something deeper, and then linking that with sacralization of the person – I think that is very nicely done. He is also very generous to a lot of the other writers he is dealing with. But every so often there is a sting in the tail, as we say in English, where he doesn't really criticize a particular writer except when he does it in the footnotes. But you can see quite clearly that he has a number of people in his sights that he wants to criticize. He does it very gently, which is nice as well. Particularly with respect to those who are skeptical themselves, like Sam Moyn, about what is going on in the nineteenth century. I think Joas does a good job of informing us as to certain implications of the nineteenth century that Moyn wants to downplay, particularly with regard to slavery and torture. He makes a nice story of that. So that has essentially been my summer reading so far.

What's next on the agenda?

Something completely different. A book called *Laughing Boy*, published in 1929, by Oliver La Farge, about a young boy growing up in New Mexico, and it is essentially an Indian-American perspective on the changes that he sees around him. I had this on my reading list for an awfully long time. La Farge got a Pulitzer Prize. And he had a son who became a prominent figure in the American folk-music scene, which I am quite interested in, in Greenwich Village in the 1960s. My musical tastes are quite eclectic and varied – one of the people I really like is Johnny Cash. He brought out a group of ballads in 1964-65 called *Bitter Tears*, which is about American Indians and their experiences under the white man. A lot of the songs were written by Peter La Farge, Oliver La Farge's son. So one of the places we would really like to go while being in the U.S., my wife and I, is New Mexico. I thought then this would be a good opportunity to finally read *Laughing Boy*. It has nothing to do with law, a bit to do with

anthropology, not much to do with human rights, but we will see how it survives from being published in the 1920s to being read in the 2010s.

How did it get onto your list? How and why did it come into your focus?

It came into my focus because my daughter is reading history at Cambridge and she is doing her dissertation on different understandings of American identity. And I sort of reflected back on some of the different areas of American identity that I was familiar with. And one of the areas we were talking about was American-Indian identity and how it related to the wider American understanding of itself. I have had an interest in American Indians for some time but have not really focused on them for a long time really. And we got talking about La Farge and Johny Cash and about the controversy surrounding Cash's recordings in the 60s, a controversy that was seen very much a part of the American civil rights movement. And then I remembered this novel, which I had never read, to my shame, and thought that I should give it a try.

American identity is still an enigma to you? It attracts your attention and inquiry?

Yes, very much so. I think wherever you do your graduate work affects your understanding of yourself at quite a deep level, and I did mine at Yale in the 70s. That was quite an intense period in terms of Americans thinking about themselves. You had these major political developments. I came in just after Nixon and the threatened impeachment. It was real turmoil politically. And then you got the rise of the neoconservatives, but you also got the backlash on race, and race has been talked about all the time. So I have always been interested in that side of American life. And I never fully came to grips with the diversity of American identities that are available. Often they are regional as well. I have always had an interest in the background, and it has almost grown into a hobby. That is partly because I spent so much time in the States. One still always feels like an outsider, and I want to remain an outsider, but nevertheless with a deep fascination that challenges me to explain what this society is doing. You might have had the same reactions, because you spent a lot of time in the U.S. as well.

For me it was a profoundly transformative experience when I went to the U.S. for the first time. Which was actually quite late, at the very end of my legal education, when I went to New York, clerking for the European Commission. My "Europeanness" was modified forever. And there still remains a great fascination.

We decided a long time ago that we would not move to the United States and have our children there, because we wanted them to be Europeans, to be honest. But the fascination remains.

Can you remember the readings that impressed you most during your graduate years at Yale?

That is very interesting. Gosh, can I remember them? At the time, I did constitutional law mostly, and the person that was very much at the forefront of the debate of that time was Alexander Bickel. I did constitutional law in my first year with a professor

called Ralph Winter, but I also did a lot of work with Owen Fiss and Bruce Ackerman and Guido Calabresi. I suppose that apart from these men themselves, particularly Calabresi and Fiss, the person that remains most with me is Alex Bickel, not necessarily because he has influenced me that much, but I keep on coming back to thoughts that you think are original and then you think about it a bit more and of course that's where a lot of it came from. He was considerably more politically conservative than I was. And that was partly why it was such a good antidote. Because when I came in I had a very enthusiastic and naïve view of what courts could do, very much in the civil-rights tradition. And Bickel was among the most prominent in urging caution and being reserved. So it was a considerable damper on my enthusiasm, my naïve enthusiasm, when the guy who taught me constitutional law – who was very much in the Bickel tradition – kept on emphasizing Bickel and coming back to him once he learned what my political orientation was. He used me as the opportunity to make a lot of points to the rest of the class, and I was brought out every so often as a token liberal and forced to rethink things. Bickel was quite an influence on me. He died, I think, just after I arrived at Yale in the fall of 1974. I stayed from 1974 to 1976, the first year was the LLM, and then I stayed on to do some work on what would become my PhD thesis.

Back to the present. Which three books or articles would you recommend to readers of Verfassungsblog *as Fall readings, right at the outset of the new academic year?*

One problem – and my children are often making fun of this – is that apart from the academic stuff I read a lot of detective stories. And that dates from my mother who read a lot of American detective stories. I was brought up on detective stories and I have kept that going. So in terms of relaxation I have got a whole section of my library – I am just now sitting in front of it – that is full of detective stories. It is rather depressingly lowbrow reading. The person I have read a lot of is an Irish writer called John Banville, a very prominent Irish novelist and a very serious writer, but he has also written a series of detective stories under the name of Benjamin Black. At first nobody knew that Benjamin Black was a man identical with John Banville, and he wanted to distance himself from the series, initially. The books are all about Dublin in the 1950s, and having grown up in Belfast in the 1950s, I can say that a lot of the atmosphere is extraordinarily well done, a lot of oppressiveness and cold and dreariness of the 1950s. So I am very enthusiastic about these Benjamin Black books, and for anybody interested in detective stories, or in the 1950s, or in Ireland, I think they are very, very good reading. It sort of does for Dublin what Donna Leon does for Venice – capturing an atmosphere very well indeed whilst weaving in a lot of the then current political or social concerns into the stories. That is very nicely done, and very well written – so I would recommend Benjamin Black!

I am already intrigued – and I am not into detective stories at all. But is there also any legal reading you would recommend?

Oh gosh! For summer reading?

Or for "getting back to work" reading …

For “getting back to work” reading … It’s funny, but for the moment I am doing an awful lot more of non-legal reading than legal reading. It’s a hard push to think about something specific, about one book that has grabbed my attention in the last few months. What I am planning is to do a lot more thinking and reading for the Leverhulme project on notions of comparativism. And in that context I would like to do a lot more reading on the history of comparative thought in law. But that is more for the future than something I would want to recommend immediately. No, I don’t really have a legal book that I would immediately want to press on you.

Then the implicit recommendation is to not neglect non-legal books, as they might at times even be more inspirational for legal work than law books?

That’s right. In part, that is a demonstration not only of my own taste but a demonstration of the luxury of being on a three-year research leave because of the Leverhulme. Having the opportunity to be able to do so much reading around the subjects I am interested in, and particularly non-legal reading, is just such a luxury that I am trying to take advantage of as much as possible. And then eventually apply it in the context of the themes that I am thinking about. But if you did press me, the book that I have been most engaged in thinking about is a book on labor law rather than constitutional law and human rights – *The Legal Construction of Personal Work Relations* by Mark Freedland and Nicola Kountouris. They have done a really very interesting book on employment law. It sounds rather tedious and boring and technical – but it is anything but. In this context they basically are re-thinking the theoretical underpinnings of labor law in a human-rights context – in the British context in particular it is really quite a pressing issue, because one of the debates there is whether it has collapsed as a discipline, whether there is anything that you could think of as an autonomous labor-law system at all. So they have tried to think through the implications of this debate as to whether there is an autonomous element to labor law, and what it relates to, or whether it has been swallowed up by notions of human rights, more broadly. I find it quite interesting to see how you as a scholar think through or re-think the fundamentals of a subject that you have been involved in – in Mark’s case – for thirty, forty years, and re-think it from the ground up in the context of changes in the social and legal environment. That is very interesting. There was also a conference at Oxford on it this summer.

From a German perspective it seems that the entire field of labor law has become very technical and disconnected from what constitutional lawyers and human-rights lawyers are doing.

One of the things that always intrigued me is how far labor law is very context-specific in the sense of each country having a very different system of labor regulation. And of course, in the European Union context, that is increasingly hard to hold to. So it turns out that it is not just a question of engagement – doing labor law and human rights – but also engagement in doing labor law and human rights in the European context. It would seem to me almost impossible, for example, that American labor lawyers would understand what this debate is all about. It just seems so incredibly Europeanized at the moment. So one of the interesting questions is whether there is that sort of a renewed split between different systems of labor law going on, and part of what Mark and Nicola are reflecting upon is an

attempt to not just re-theorize British labor law but labor law more broadly. From the German point of view it would be very interesting to see whether there is a similar re-theorizing going on, given the impact of European labor law on German labor law. As you know, I am more interested in the theoretical issues, not in the political superstructure.

Thank you so much, Chris. Have a safe journey! We are all looking forward to hearing about your impressions in approaching the Statue of Liberty the second time around.

Thank you.

Questions by Alexandra Kemmerer
